

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

ARCHIE RACHEL, )  
Plaintiff, )  
v. ) Case No. CIV-14-655-R  
JEFFERY TROUTT, KATRYNA FRECH, )  
JANET DOWLING, and FELICIA HARRIS, )  
ALL SUED IN BOTH THEIR OFFICIAL )  
AND INDIVIDUAL CAPACITIES, )  
Defendants. )

## **REPORT AND RECOMMENDATION**

Plaintiff Archie Rachel, a state prisoner appearing *pro se*, brings this action pursuant to 42 U.S.C. § 1983, alleging a violation of his constitutional rights. Before the Court are two motions seeking default judgment as to Defendant Katryna Frech. (ECF Nos. 71, 74). Defendant Frech has responded to the motions.<sup>1</sup> (ECF No. 81). It is recommended that Plaintiff's motions for default judgment against Defendant Frech be **DENIED**.

## I. PROCEDURAL BACKGROUND

Plaintiff filed his complaint on June 23, 2014, alleging, among other things, that Defendant Frech had violated his Eighth Amendment rights by being deliberately indifferent to his serious medical needs. Defendants Dowling, Troutt and Harris were served on December 5, 2014. But Defendant Frech was not served until April 2, 2015.

<sup>1</sup> Defendant Frech responded to the motions for default judgment through attorney Stephanie Lawson, who also represents the other defendants. By Order (ECF No. 89), Ms. Lawson has been directed to enter her appearance on behalf of Defendant Frech. Defendant Frech has been given twenty-one days to answer or otherwise respond to the complaint.

Eleven days later, a Report and Recommendation was filed, (ECF No. 52), recommending dismissal of the claims against Defendant Frech pursuant to 28 U.S.C. §§ 1915A and 1915(e)(2)(B)(ii) (pertaining to actions brought in forma pauperis). The district court adopted the Report and Recommendation and entered judgment against Plaintiff on May 27, 2015. Plaintiff appealed.

On April 26, 2016, the Tenth Circuit Court of Appeals reversed the district court's judgment and remanded the case for further proceedings. In so doing, the Tenth Circuit directed the district court to "revisit its ruling on the claims against the prison nurse." (ECF No. 68:18).

## **II. ANALYSIS**

The order reversing and remanding the judgment of the district court did not expressly order Defendant Frech to answer or respond to Plaintiff's complaint. Rather, the order directed the district court to "revisit" the grounds for dismissal. Upon reconsideration of Plaintiff's complaint, as it relates to the Eighth Amendment claims lodged against Defendant Frech, this Court has determined that Defendant Frech should answer or otherwise respond to Plaintiff's Complaint. The time for her to do so has not run. Therefore, Plaintiff's motions for default judgment are premature and should be denied.

## **III. RECOMMENDATION**

In light of the procedural posture of this case, it is recommended that Plaintiff's motions for default judgment as to Defendant Frech (**ECF Nos. 71, 74**) be **DENIED**.

#### **IV. NOTICE OF RIGHT TO OBJECT**

The parties are advised of their right to file specific written objections to this Report and Recommendation. 28 U.S.C. § 636; Fed. R. Civ. P. 72. Any such objections must be filed with Clerk of the District Court by **August 8, 2016**. The parties are further advised that failure to make timely objection to this Report and Recommendation waives the right to appellate review of the factual and legal issues addressed herein. *Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10<sup>th</sup> Cir. 2010).

#### **V. STATUS OF REFERRAL**

This Report and Recommendation **DOES NOT DISPOSE OF ALL ISSUES** referred to the undersigned Magistrate Judge in this matter.

ENTERED on July 21, 2016.



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SHON T. ERWIN  
UNITED STATES MAGISTRATE JUDGE